THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 24090 of 2006

Dated: 22-11-2006

Between:

M/s. Swagath Bar & Restaurant
Rep., by its Proprietor,
G.Peddarajam Goud.

..... PETITIONER

AND

The Assistant Provident Fund Commissioner & CIC,
Sub-Regional Office, Karimnagar and another.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 24090 of 2006

O R D E R:

This writ petition is filed questioning the order passed by the first respondent dated 28-04-2006.

I have heard the learned counsel for both the parties.

The material on record shows that the first respondent-Assistant Provident Fund Commissioner, Karimnagar in exercise of powers under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') passed an order, dated 03-02-2006, holding that a sum of Rs. 2,18,975/- is due from the petitioner towards Provident Fund Contributions for the period from May, 2004 to November, 2005 apart from the interest payable under Section 7Q of the Act.

The petitioner claims that the order, dated 03-02-2006, was an *ex parte* order which was passed without hearing the petitioner. Accordingly it made an application under sub-section (4) of Section 7A of the Act to set aside the same. However, the first respondent having treated the said application as a Review application under Section 7B of the Act, passed the impugned order, dated
28-04-2006, rejecting the application on the ground that it was filed beyond the limitation prescribed under the Act. The said order is challenged in this writ petition primarily on the ground that since the application made by the petitioner was under
sub-section (4) of Section 7A of the Act to set aside the *ex parte* order, the petitioner is entitled to make the application within three months from the date of communication of the order under Section 7A of the

Act, and the impugned order is *ex facie* illegal and erroneous.

A copy of the application presented by the petitioner before the first respondent has been placed before this Court which shows that the said application was made under sub-section (4) of Section 7A of the Act and the same was received in the office of the first respondent on 17-04-2006. Thus, on the face of it, the said application was well within the time prescribed under sub-section (4) of Section 7A of the Act.

In the circumstances, as rightly contended by the petitioner, the impugned order, dated 28-04-2006, which was passed on an erroneous assumption that it is a review application made under Section 7B of the Act cannot be sustained and is liable to be set aside on that ground alone.

Accordingly, the impugned order, dated 28-04-2006, is set aside and the writ petition is disposed of with a direction to the first respondent to consider the application of the petitioner dated 17-04-2006 afresh and pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order. No costs.

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G. ROHINI, J

Dated: 22-11-2006
KLP